

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

Dwayne Sims,	:	
	:	Case No. 1:23-cv-00105
Plaintiff,	:	
	:	
v.	:	Judge Jeffrey P. Hopkins
	:	
C/O McCloud, <i>et al.</i> ,	:	Magistrate Judge Stephanie K. Bowman
	:	
Defendants.	:	

**DEFENDANTS, CHRISTOPHER McCLOUD, JEREMY OPPY, AND COREY
SAMMONS', MEMORANDUM IN OPPOSITION TO PLAINTIFF'S APPLICATION FOR
ENTRY OF DEFAULT [DOC. 17]**

NOW COME the defendants, Christopher McCloud, Jeremy Oppy, and Corey Sammons ("Defendants"), by and through counsel, and hereby opposes Plaintiff, Dwayne Sims' application to the Clerk for Entry of Default.

Plaintiff filed this action on February 6, 2023. [Doc. 1]. On May 8, 2023, the Magistrate Judge issued a Report and Recommendation after engaging in an initial screening of Plaintiff's claims under the Prison Litigation Reform Act. [Doc. 11]. In her Report and Recommendation, the Magistrate judge recommended that Plaintiff's claims against Defendants proceed, and further ordered the United States Marshal's Office to serve the complaint and a summons to Defendants. [Id.]. The summons was issued by the Clerk the same day and sent to the United States Marshal's Office for service via certified mail. Defendants were each served with copies of the summons and Complaint on May 31, 2023. Defendants, through the undersigned counsel timely entered an appearance in this action by filing an Answer to the Complaint on June 15, 2023. [Doc. 15]. Eleven days later, Plaintiff submitted his application to the Clerk for an Entry of Default. [Doc.

17].

Only when a defendant has failed to plead or otherwise defend, and the moving party has shown by affidavit or otherwise, may a Clerk enter the defendant's default. Fed. R. Civ. P. 55(a). Here, it is clear and obvious that Defendants timely submitted a pleading in response to Plaintiff's Complaint after being served with the Complaint and summons. Plaintiff has not provided an affidavit or otherwise showing Defendants failed to plead or otherwise defend against this action.

For this reason, the Court and Clerk should reject Plaintiff's application for the Clerk to enter default on behalf of Defendants.

Respectfully submitted,

DAVE YOST
Ohio Attorney General

/s/ D. Chadd McKitrick

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Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Defendants' Memorandum in Opposition to Plaintiff's Application for Default* has been electronically filed on July 17, 2023 and has been served upon Plaintiff via U.S. mail, postage prepaid at the below address.

Dwayne Sims, #A753-052
Toledo Correctional Institution
P.O. Box 80033
Toledo, Ohio 43608

/s/ D. Chadd McKitrick
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Senior Assistant Attorney General